

Protest of)	
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LISTA INTERNATIONAL CORPORATION)	Date: September 11, 1990
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Delivery Order No. 484145-90-N-0374)	P.S. Protest No. 90-47

DECISION

Lista International Corporation ("Lista") protests the rejection of its proposal as technically unacceptable and the subsequent award of a Federal Supply Schedule ("FSS") contract^{1/} for modular parts cabinets to Stanley-Vidmar Inc. Lista asserts that it should have received the award because it offered the best price and technical proposal. Lista requests that the award to Stanley-Vidmar be canceled and reissued to it.

On June 19, 1990, a procurement specialist in the Houston, TX Procurement Division orally solicited quotations from Officer & Associates,^{2/} Stanley-Vidmar and a third vendor for modular parts storage cabinets needed by Houston's Independent Mail Processing Center. All three companies are FSS vendors. The vendors were informed that award would be based on best delivery date, best price and least assembly time. The three contractors were later supplied with a written list of the number of units needed, showing cabinet size dimensions, drawer size dimensions and drawer descriptions. The requirement was for cabinets 30" wide by 27 3/4" deep by 44" or 59"

^{1/}A Federal Supply Schedule contract is an indefinite quantity contract awarded by the General Services Administration ("GSA") to commercial contractors for various standard use supplies, equipment items, and services. GSA terms and conditions, rather than those used by the Postal Service, apply to FSS contracts. These GSA contracts are designed to obtain volume purchase discounts for the various government agencies while still giving those agencies the option of ordering items directly from contractors. In order to utilize these discounts, the Postal Service issues a delivery order against a Federal Supply Schedule directly to a contractor and receives the discounted items directly from the contractor. See also Procurement Manual ("PM") 3.1.5 b.2.

^{2/}Officer & Associates is an authorized agent of Lista International Corporation for the south Texas market. In general, Officer & Associates provides quotations, design and engineering assistance and installation and service support to commercial and government customers. In this particular procurement, Officer & Associates performed the above functions, representing Lista's interests. In Officer & Associates' cover letter attached to its response, it stated "[p]lease address Purchase Order to: Lista International Corporation, c/o Officer & Associates." As the supplier of the proposed cabinets and the addressee for any prospective purchase order, Lista has standing to bring this protest in its own name. See York International Corporation, P.S. Protest No. 89-77, January 19, 1990.

high. The vendors submitted written proposals in response to the request for quotations. Lista offered a price of \$81,873.65 and Stanley-Vidmar offered \$87,250.99. A third offeror was not further considered, as its priced was determined to be too high.

These two proposals were technically evaluated, using the GSA catalogs and additional information supplied by each vendor. A look at Lista's catalog and a telephone clarification of the model numbers offered revealed that its product was technically unacceptable. Lista's cabinets were only 28 1/4" wide. Stanley-Vidmar's proposal offered cabinets of the same dimensions as the requirement and award was made to it July 11, 1990. A delivery order was issued to Stanley-Vidmar against its GSA contract.^{1/} Lista timely protested to this office.

In its protest, Lista states that it was told that award was made to Stanley-Vidmar because its drawer was 25 x 25 inches, wide by deep, while Lista's drawer is 24 x 24 inches, wide by deep. Lista disputes that a larger drawer is more advantageous to the storage of small parts and contends that this solicitation did not allow offerors enough opportunity to respond to perceived technical deficiencies.

The protester further argues that it is the cubic storage capacity, not the storage area, that allows high density parts containment. Lista asserts that while its drawers have a smaller base area, its cabinets' design provides greater storage volume. In addition, the protester states that its interior compartments show a maximum of 3/8 inch per compartment difference from Stanley-Vidmar's. The protester continues that this minor drawer size difference is largely irrelevant since the solicitation required accessories to subdivide the drawer into smaller compartments and there was no indication that any of the parts to be stored in these drawers would be over 24 inches.

Lista challenges the assertion that only a larger drawer could hold the parts the Postal Service wished to store. The protester asserts that its cabinets incorporate all of the salient characteristics for high-density storage of parts as the cabinets offered by Stanley-Vidmar and are equal or superior in design and construction.

The contracting officer reports that Lista did bring up the issue of cubic space versus square inch space. However, the technical evaluators stressed that square inches of drawer bottom storage space was more important to them than cubic space. The technical evaluators reported that Lista's cabinets offered only 576 square inches of space while Stanley-Vidmar's cabinets offered 631.3 square inches. The contracting officer states that in order to meet the needed amount of storage space with the Lista products offered, the Postal Service would have had to purchase approximately seven additional cabinets. These additional cabinets would have created a space problem since the space set aside in the Mail Processing Center could not accommodate additional cabinets.

According to the contracting officer, since Lista's products did not meet the requirements, award was made to Stanley-Vidmar, whose products did meet the size and space requirements. The contracting officer adds that cancellation of this contract and

^{3/}The Stanley-Vidmar cabinets have already been delivered, installed and filled with vital parts of Mail Processing equipment.

award to Lista would be extremely detrimental at this time since Stanley-Vidmar cabinets have already been installed and filled with Mail Processing equipment.

Discussion

"This office will not substitute its judgment for that of the contracting officer or disturb his evaluation of an offer's technical acceptability unless it is shown to be arbitrary or in violation of procurement regulations." T&S Products, P.S. Protest No. 90-12, May 30, 1990. The contracting officer and the technical evaluators rejected Lista's proposal because it did not offer the physical drawer dimensions requested and required by the solicitation. Lista does not deny this assessment of its technical capabilities.

Since Lista agrees that its cabinets do not meet the solicitation requirements, there is no argument that the contracting officer's decision was arbitrary. Further, Lista does not contend that there was a violation of the procurement regulations and we see no such violation. In fact, current postal regulations state that "[e]ach proposal must be examined to determine whether it meets the requirements of the solicitation." PM 4.1.4 c. "[A] proposal that does not meet the solicitation requirements is technically unacceptable." T&S Products, supra. Since it is undisputed that Lista's proposal did not meet the solicitation requirements and the procurement regulations have been followed, this portion of the protest must be denied.

Although Lista does not dispute its product's failure to meet the required dimensions, it challenges the need for those dimensions. Such a challenge is a contention that the specifications were unduly restrictive and is a protest against the terms of the solicitation. See T&S Products, supra; York International Corporation, supra. "Such protests must be received by the time and date set for receipt of offers." York International Corporation, supra; see PM 4.5.4 b. "Here, [Lista] could have alerted the contract [specialist] to its concerns about the restrictive terms of the . . . solicitation, following up with an immediate protest letter." T&S Products, supra.

Although the record reflects that Lista did discuss the cubic space versus square inch space issue with the contracting personnel, it is unclear when this discussion took place. In any event, it is certain that Lista never formally protested this issue in written form. A "[p]rotest [is] a written objection by any interested party concerning the terms of a solicitation." PM 4.5.2 a. [Emphasis added.] Absent written documentation of the protester's earlier concerns, its present challenge to the restrictive nature of the solicitation is untimely and to that extent this protest must be dismissed.

The protest is dismissed in part and denied in part.

William J. Jones
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Office of Contracts and Property Law
[checked against original JLS 6/18/93]